

CHARLES PURSELL AND ADELE	:	
PURSELL,	:	
	:	
PETITIONERS,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
EAST AMWELL TOWNSHIP BOARD	:	DECISION
OF EDUCATION, HUNTERDON COUNTY,	:	
	:	
RESPONDENT.	:	
	:	
_____	:	

SYNOPSIS

Petitioning residents alleged the Board put out false and misleading information with regard to a school bond referendum. Petitioners sought order of the Commissioner nullifying the results of the election.

ALJ found that the Board did not misrepresent or conceal the statutory time limit for attacking the validity of the October 7, 1997 bond referendum; that petitioner failed to follow the advice given them by counsel in a written memorandum; and that petitioners failed to sustain the burden of proving that equity required the extension of the statutory time for this action. ALJ concluded that in order for the referendum in question or the proceedings prior thereto to be challenged, the petition had to be filed on or before October 27, 1998. Petition was not filed by that date. ALJ dismissed petition as untimely.

Commissioner adopted findings and determination in initial decision as his own.

OAL DKT. NO. EDU 951-98  
AGENCY DKT. NO. 5-1/98

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The record of this matter and the initial decision of the Office of Administrative Law (OAL) have been reviewed. The Board's exceptions were submitted in accordance with *N.J.A.C.* 1:1-18.4.

The Board excepts only to that portion of the initial decision wherein the ALJ finds that "Petitioners applied to the Board for absentee ballots for the special election, receiving with the absentee ballots 2 flyers encouraging a 'Yes' vote on the referendum." (Initial Decision at pp. 2, 3) The Board asserts that "this statement incorrectly suggests that [it] mailed to the voters the absentee ballots, together with the flyers." (Board's Exceptions at p. 1) However, this statement is not supported by the documents on record, according to the Board. Moreover, the Board recognizes that it is not charged with the responsibility of mailing absentee ballots to voters who request one, as per *N.J.S.A.* 19:57-6. Thus, the Board urges that the initial decision be adopted, with modification.

Upon careful and independent review of the record in this matter, the Commissioner concurs that this matter is properly dismissed as untimely, pursuant to *N.J.A.C. 6:24-1.2(c)*. In so finding, however, he agrees that the record does not support the ALJ's finding that petitioners applied *to the Board* for absentee ballots. Rather, petitioners alleged that, *after having received their absentee ballots*, they received the flyers which are the subject of the within controversy. Petitioner Charles Pursell attests that he requested an absentee ballot and was "\*\*\*\*mailed flyers, appearing to be issued by the Board of Education \*\*\*." (Certification of Charles Pursell at p. 1)

Accordingly, the initial decision of the ALJ is affirmed, with modification. The within Petition of Appeal is dismissed.\*

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

NOVEMBER 17, 1998

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\* This decision, as the Commissioner's final determination in the instant matter, may be appealed to the State Board of Education pursuant to *N.J.S.A. 18A:6-27 et seq.* and *N.J.A.C. 6:2-1.1 et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.